

Massachusetts

Approximately thirty companies are registered as competitive local exchange carriers in the state of Massachusetts. However, according to a Massachusetts Department of Public Utilities representative, most companies appear to be "positioning themselves" rather than actually offering service. Those that are providing service are offering limited local service mainly to business customers. Only one company, RCN of New England, is actually targeting the residential market.

According to an early 1997 statement by John B. Howe, Chairman of the Massachusetts Department of Public Utilities, regulators and the industry have been feverishly busy during the past year in arbitration proceedings aimed at finalizing agreements between NYNEX and more than a half-dozen companies that are intent on providing local telecom service in several parts of Massachusetts. This competition will undoubtedly start in urban centers like Boston. Springfield is also being targeted and it's reasonable to expect it to radiate statewide.⁹

Michigan

Approximately thirty companies, including MCImetro, TCG Detroit, MFS Intelenet, AT&T, Brooks Fiber, LCI and Sprint have orders granting them authority to provide basic local exchange service in Michigan. In order to receive such a license, companies must offer both residential and business local service in their tariffs. Whether the companies actually provide these services is in question. Once a tariff is filed, the Michigan PSC takes a reactive rather than proactive position on issues. Unless they receive a complaint, the PSC does not look into what services companies are actually offering.

Mississippi

Approximately twenty-three CLECs have been granted authority to provide local service in Mississippi and about a third of these companies have actually filed approved tariffs. According to a PSC representative the companies that are providing local service are only marketing to business customers. The representative stated that most companies have said that the customers initially targeted would be businesses, but if a residential customer requests service they would try to accommodate that request. The representative noted that some companies, however, will only serve businesses.

Montana

Companies do not need certification to provide local service in Montana. They need only register with the state public service commission. When asked about the state of competition, a PSC representative said that there are niche companies providing local service but competition is "fledgling" and "spotty."

⁹ Commonwealth of Massachusetts Department of Public Utilities Website, URL <http://www.state.ma.us/dpu/dpu.htm>.

AT&T and US WEST have been engaged in negotiations over interconnection but have not yet come to an agreement. A PSC representative said she believes that the other large long distance companies are waiting to see the outcome of the AT&T negotiation before they consider entering local competition. In its application for authority, Intermedia Communications, Inc., a reseller, states that it will "market to business customers in the State of Montana. However, if a residential customer requests service we will provide service to them."

New York

Approximately seventy-five companies are certified to provide local service in New York. Only fifty-three of these companies have actually filed tariffs. Of that number, nineteen have stated that they intend to offer both business and residential service, four will offer residential service and only thirteen will only provide business service. RCN is currently reselling services but is planning to build its own facilities.

Oklahoma

There are twenty companies certified to provide local service in Oklahoma, with other applications pending. Fewer companies actually have tariffs filed and are actually offering service. According to a PSC representative, Brooks Fiber seems to be the only CLEC making a dent in local residential service.

South Carolina

Fourteen companies in South Carolina have filed for and received approval from the Public Service Commission to offer local phone service and fifty-nine interconnection agreements have been signed. However, only two companies, ACSI and Intermedia, are actually offering local service and then only to a small number of business customers.

Texas

AT&T, MCI and Sprint are among the more than one hundred fifty telephone companies that have registered in Texas to provide local service. While most companies plan to resell services of the local carriers, some companies are building or intend to build their own networks and develop switch facilities.

A spokeswoman for the state PUC estimated that about five new entrants have begun providing very limited local residential service in Texas. According to the representative, it appears that companies want to offer their long-distance business customers local service. These companies are mainly targeting big cities such as Dallas, Houston and Austin.

What the Press Is Saying About Local Competition

Press reports reflect the conventional wisdom that the "cherry picking" we see in the market now is a natural stage in the development of competition.

In California, the *San Francisco Chronicle* reports that the widest array of choices of telecommunications services is available to large businesses in areas served by the new competitors' fiber networks.¹⁰ In urban business districts, the large long distance companies are working to capture customers by combining their local and long distance bills and bundling other services. In states such as New York, the market for competitive access has been brisk for several years. Providers there are quickly signing up new local customers.

"There is competition for business customers in large urban markets," said Scott Cleland, a senior analyst at Schwab Washington Research Group an industry research firm. "But the question is: Where is competition in the residential market going to come from?"¹¹ He predicts that there will be very little residential competition because the major long distance companies are focusing on the business market over the less profitable residential market. Cleland says, "The real disappointment of the Telecom Act is that there is going to be very little residential competition."¹²

Mr. Cleland is at least asking the right questions about the development of the market. Other press reports speculate about when, and to what degree, we will see competition in the local residential service market.

Some analysts say the benefits of competition in local phone service for residential consumers may be slow in coming. On the whole, residential consumers spend less on phone services, and are, therefore, less profitable to serve than business customers. Hongjun Li, a telecommunications analyst at Parks Associates, says that "right now very few consumers have a second choice" in local phone service. It will take at least two years for at least 20% to 30% of consumers to feel they have a second choice." Brett Azuma, director and principal analyst at California-based Dataquest Inc., said that local service is the last area of telecommunications largely untouched by competition. "Local service, more than just straightforward profitability, provides that link to the customer," he said. "It's the first point that the end user connects with the public switch network, and, as such, it's considered strategic."¹³

¹⁰ Ilana DeBare, "Most Business Do Have Real Choices for Local Phone Service," *San Francisco Chronicle*, April 1, 1997.

¹¹ Mark Landler, "Instead of the Flood . . .," *New York Times*, February 10, 1997, p. D7.

¹² Mark Landler, "Year of Intense Activity Looms . . .," *New York Times*, January 2, 1997.

¹³ "GTE Prepares to Invade Local Access Service Turf," *Dallas Business Journal*, October 17, 1997.

This article and others indicate that residential competition must come eventually because residential service is essential for those companies who want to provide a full range of services. Where are the companies that are in the best position to begin offering those packages? The big three long distance companies were supposed to lead the way into this market, but so far they are not making a dent.

Some observers offer these theories.

Cherry Picking

The three largest interexchange carriers, AT&T, MCI and Sprint, are slowly entering local telephone service, but are taking time to determine the most lucrative method for breaking into the market. Most are targeting the business community. According to Michael French, vice president of research with the Insight Group which does market research on the telecom industry, AT&T, MCI and others are "cherry picking," or luring away, BellSouth's most profitable business customers by offering them one-stop shopping for local and long distance service at discounted prices.¹⁴

When the Act passed, AT&T Chairman Robert Allen boldly predicted that it would snare at least 1/3 of the local market within five to ten years.¹⁵ AT&T made its big splash in January, 1997, when it announced that it would begin offering local phone service on most outbound calls for any business dialing up monthly bills of \$2,500 or more in 35 states. Many analysts found that offer disappointing, expecting perhaps a partnership announcement with GTE.¹⁶

MCI has taken an aggressive approach to gaining local business customers. So far the company has launched local service for mid-sized to large businesses in twenty-five markets (twenty-one over its own networks), including Atlanta, Chicago, Los Angeles, New York, and Seattle and plans to be in sixty by year end.¹⁷

Sprint has filed for regulatory approval to provide local service in forty-seven states and the District of Columbia. Sprint has begun to serve large business customers in Orlando, Florida. It has said that it intends to size up local markets carefully. "We're not going to throw dollars at what might be. When we go into a city we'll know which customers we're going after, and that will determine where we build or lease facilities," said Sprint president, D. Wayne Peterson. Sprint is committed to spending billions on new wireless technology.¹⁸

Lack of Focus and Systems Readiness

¹⁴ Tom Guarisco, "Critics of Expansion Urge More Competition," *The Advocate*, July 13, 1997.

¹⁵ Richard Siklos, "Crybaby Bells . . ." *The Financial Post*, August 2, 1997, p. 7.

¹⁶ Patricia Horn, "AT&T Joins Local-Service Bandwagon," *Sun Sentinel*, January 28, 1997, p. 3D.

¹⁷ Richard Siklos, "Crybaby Bells . . ." *The Financial Post*, August 2, 1997, p. 7.

¹⁸ Andrew Kupfer, "The Telecom Wars," *Fortune*, March 3, 1997.

While the upstarts are luring away customers and putting pressure on prices in the \$70 billion a year long distance business, their drive into the \$100 billion local market is sputtering. It is clear that no long distance company has discovered an easy way to enter the local market. AT&T has the haziest strategy of all, vowing to do whatever it takes to crack the market. A former AT&T insider has said that the lack of local focus springs from indecision. The company has shifted strategies too often, ignoring fundamentals while trying to look slick, and has been agonizingly slow at implementation. Recently it reached out to the bypass companies for help. And the company still doesn't have an integrated billing system so that it could offer customers all services on a single bill. It only recently started billing for its long distance service.¹⁹

At one point AT&T's strategy for entry into the local market involved a merger with SBC Communications. Since that idea was quashed by FCC Chairman Hundt, AT&T's strategy has been murky. It now plans to begin with total services resale and use the unbundled network platform as quickly as it can.²⁰

Limit Competition in the Long Distance Market

Lois Hedg-peth, recently named president of AT&T's 14-state western region, said her goal is to make the long-distance company a force in local telephone markets from California to Minnesota. But she is the first to admit that AT&T hasn't made much of an impact in local markets so far, especially in California. To accomplish her goal, her unspoken task may be to delay Pacific Bell's entry into the long-distance market.²¹

Press Reports: A Sampling of What's Happening in the States

Florida

Those companies actually offering local service are, not surprisingly, focusing on the business market. MCI offers facilities-based service to businesses in Tampa, Orlando, Ft Lauderdale and Miami.²² Sprint, Intermedia, MFS, ACSI and AT&T are also offering local service to business customers in limited areas.²³ AT&T says that it plans to go after both residential and business customers but so far only business customers have been targeted. It plans to test local residential service in the Southeast, first in Georgia. If that goes well, they might begin offering service toward the end of the year.²⁴

¹⁹ *Ibid.*

²⁰ Richard Siklos, "Crybaby Bells . . .," *Financial Post*, August 2, 1997.

²¹ Staff writer, "Women Executives Take Center Stage as Telecommunications Industry Wars Play Out," *San Francisco Business Times*, October 17, 1997.

²² MCI Company Press Release, "MCI Seeks Cuts in Local-Competition-Chilling Costs," August 28, 1997.

²³ "You're Going to do What?" *The Tampa Tribune*, August 3, 1997, Business and Finance, pg. 1.

²⁴ "AT&T Joins Local-Service Bandwagon," *Sun Sentinel*, January 28, 1997, Business, pg. 3D.

Time Warner Cable came within weeks of launching its own residential phone service last October. But after building a phone network throughout central Florida, the venture was stopped by New York executives in reaction to the company's sagging stock price.²⁵

Georgia

More than forty telephone companies, most of them small, have signed agreements with BellSouth that would permit them to offer local service. As of last May, neither AT&T, MCI nor Sprint had even announced a target date for offering local service. AT&T recently stated that it would offer only resale of lines and services offered by BellSouth, although AT&T does offer some local service to businesses over its own lines.²⁶

South Carolina

Upstart local service companies plan to focus most of their resources in South Carolina on high volume business accounts, ignoring the residential community. When asked what he would tell residential customers, Carl Jackson, director of local exchange services for Intermedia, said, "[I'd] tell them don't wait on [us] for the time being: it's strictly a business focus now."²⁷ ACSI spokesman James Falvey echoed that sentiment, saying that "the economics aren't there right now for us to provide residential service."²⁸

Texas

While competition is starting to surface in Texas, many observers have said that competition will not count until AT&T and MCI really get into the game.²⁹ This may soon happen as, according to a PSC representative, contractual issues regarding interconnection terms and conditions for local telephone competitors brought for arbitration by AT&T and MCI were resolved at the end of September.

While the residential market is largely still on hold, the business market appears poised to thrive. Business phone competition "is happening very quickly," said Jim Henry, who works for a company that manages office building phone systems.³⁰ In addition, in Dallas, a handful of new entrants are installing equipment to handle local calls, but almost all of them are targeting lucrative corporate accounts and ignoring residential customers.³¹

²⁵ "Companies Power Up Competition," *The Orlando Sentinel*, January 6, 1997, Central Florida Business Section, pg. 40.

²⁶ Michael Kanell, "AT&T Makes Formal Call to Dial into Local Service," *Atlanta Journal*, May 9, 1997, p. 01H.

²⁷ Andrew Meadows, "Competitors Stay Out of Local Phone Market," *The State*, July 18, 1997, p. B7- B11.

²⁸ *Ibid.*, at B7.

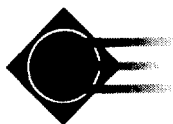
²⁹ Jennifer Files, "AT&T Adds Local Service in SE Texas," *The Dallas Morning News*, July 16, 1997, p. 1D.

³⁰ Jennifer Files, "Telecom Reform Winds Up With a Whimper," *The Dallas Morning News*, February 9, 1997, p. 1H.

³¹ *Ibid.*

The local residential service offerings are meager in comparison. AT&T is expanding its efforts to provide residential local phone service throughout Southwestern Bell's markets. "We're still in the very early stages of crawling," said AT&T spokesman Chris Schein. Like most aftereffects of the nation's 18-month-old telecommunications reform bill, AT&T's shift is more subtle than promised, more a sneak attack than a blitzkrieg.³²

³² Jennifer Files, "AT&T Expands its Reach," *The Dallas Morning News*, August 20, 1997, p. 1D.



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December 8, 1997

DELIVERED BY HAND

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

Dear Commissioner Furchtgott-Roth:

It was a pleasure seeing you again this morning. Thank you for meeting with me and my colleagues about BellSouth's pending application under Section 271 of the Telecommunications Act of 1996 (the Act) to provide long distance telephone service within its region. The Alliance for Public Technology (APT) urges you to accord great weight to the South Carolina Public Utilities Commission's determination that BellSouth has satisfied the requirements of the 14-point checklist. APT believes that increased competition from the company's entry into South Carolina's long distance market will help to stimulate the infrastructure development necessary for deployment of advanced broadband technologies to the home.

During our discussion today, we promised to provide you with copies of APT's previous filings in the Commission's universal service proceedings. Consequently, I have enclosed the organization's comments dated December 19, 1996, further comments dated August 2, 1996, reply comments dated May 7, 1996 and comments dated April 12, 1996. In addition, I have also included a letter dated August 7, 1997

*Organization is for identification
purposes only.

from APT's Chair, Dr. Barbara O'Connor, and its President, Gerald Depo, presenting recommendations to former Chairman Hundt for promoting the goals of Section 706 of the Act. I am happy to answer any questions you or your staff may have concerning these filings or about APT and its mission.

We appreciate your time and interest. APT and I look forward to working with you.

Sincerely,

A handwritten signature in cursive script that reads "Maureen A. Lewis".

Maureen A. Lewis
General Counsel

Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

DEC 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)
)

COMMENTS OF THE ALLIANCE FOR PUBLIC TECHNOLOGY

EXECUTIVE SUMMARY

The Alliance for Public Technology (APT), a non-profit association of consumer and public interest groups, in these comments, urges the Joint Board to remedy a serious defect in the Report of the Joint Board in failing to address universal service provisions for advanced services, the deployment of advanced telecommunications networks and interconnection as integrated parts to achieve the goals of the Telecommunications Act of 1996 ("Telecom Act", "The Act"). 47 U.S.C. § 254, 706, 251. In this decision, the Joint Board acted in contravention to the goal of the Act to advance the preservation and advancement of universal service to all Americans.

In Section I we illustrate that the Joint Board erred in excluding Section 706 from its consideration and that the FCC must refrain from making the same error for the following reasons:

- The Telecom Act does define the bedrock advanced telecom goal -- universal deployment and access to switched, two-way, broadband capabilities;
- The Act requires the Commission (and states) to promote that goal in all regulatory proceedings so that it can be achieved at the earliest practicable time;

- The Commission will be acting inconsistently with that requirement if it continues to regard Section 706 as a stand-alone matter to which it will eventually turn to at some later date.
- Moreover, in the Interconnection decision, the Commission placed a very large barrier to ILEC investment in advanced telecom capabilities. That serious error must be promptly remedied.

In Section II, we point out the need for action by both the FCC and the states to promote a migratory path to move the nation from basic to advanced telecommunications services. Our comments point out:

- Explicit and equitable funding of subsidies is a precondition for workable competition;
- Market failures are a familiar and inevitable concomitant to our commitment to and reliance on market forces which can be seen in the current mal-distribution of health care, in the lack of affordable housing and in other areas in our economy.
- Reliance on market forces and on institutional user discounts will not create the necessary migratory path to move the nation towards the universal availability of advanced telecommunications services without the regulatory action provided for in Section 706 and attention to the communities of interest at risk of being bypassed or underserved by the market.
- The FCC must act now to integrate Sections 706 and 254 of the Act and begin to stimulate the development of migratory paths through the following actions:
 1. Allocate some percentage of the intrastate portion of the universal service fund to promote the development of state pilot projects to establish community structures to aggregate demand for advanced telecommunications services;
 2. Establish eligibility standards for institutional users for the special discounts which require their participation in coalitions or in strategic planning groups which are looking to aggregate community demand for advanced telecommunications services and or are themselves developing strategies towards use of telecommunications services and facilities to provide public education, information and health care services to residences and public access points;

3. Modify the Recommended Decision's refusal to reconsider its universal service definitions before 2001 and to require any reports other than those already required by FCC. An essential element of the migratory path to advanced telecom services is information on how the market place is achieving the desired build out towards providing advanced services to all Americans;
4. Order annual reviews of the use of services entitled to universal service support by community, special discount users and geographic regions that do not receive universal service support;
5. Order carriers, public utilities, state highway authorities and state advanced network managers to file annual reports on their network modernization plans, as well as the geographic location, scope and capabilities of their networks;
6. Require states to start mapping, in terms of specific capabilities, how the build out of modernized networks is progressing, as well as to give special attention to problems of social and economic redlining as they evolve.
7. Establish caps on the universal service funds for special discount users going to each state to ensure that schools, libraries and health care providers do not use up the funds and crowd out those public institutions that will require more time to develop their telecommunications plans and find universal service support.

In Section III of its comments, the Alliance outlines the range of advanced health care services that should be included in the services entitled to universal service support. The Alliance points out that with the shift in the focus of health care today away from acute interventions in institutional settings to the management of chronic illness and convalescence, health care is being delivered by a broad range of health care providers in a wide range of local community facilities including home-based care. APT points out that the new telecommunications technologies offer cost effective ways of meeting the needs of health care providers by delivering these services to patients in their homes.

It also enumerates the following points that the FCC must take into consideration in determining how to support upgrades to the public network:

- The type of network configurations being used to ensure their reach to the broadest segment of health care providers;
- The accessibility to communities of high speed advanced networks developed by public utilities, state highway, health and education departments and other entities which may cost very little to connect to technologies, deployment and equipment;
- The short life of network deployment cost estimates due to the rapidly changing and declining costs of networks as a result of evolving carrier network configurations and rising usage;
- The lower cost of using public network facilities over private, leased or dedicated lines which can reduce the amount of universal service support required by a health care provider;
- And development of eligibility requirements for universal service support which relate to use of the least expensive and cost effective way of providing access to telecommunications services.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
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COMMENTS

ALLIANCE FOR PUBLIC TECHNOLOGY

These comments are submitted in response to the Federal Communications Commission's ("FCC") November 18, 1996 Request for Comments on the Joint Board's Recommended Decision dated November 7, 1996 by the Alliance For Public Technology ("APT"). APT is a grassroots membership organization devoted to promoting universal access to advanced telecommunications services by all consumers.

These comments address themselves first to what we see as the FCC's responsibility in implementing the universal service goals and provisions of the Telecommunications Act of 1996 (herein referred to as the "Act") second, to the need to modify the Joint Board recommendations to promote advanced telecommunications; and third, to the FCC's request for comments on the scope of health care services to be included in the list of additional services and to considerations of supporting upgrades to public switched or backbone networks.

I. The FCC's 1996 Telecom Statutory Responsibilities

We believe that the Commission must act now, in this and in all other proceedings, to treat the provisions of the Act relating to universal service for advanced telecommunications services, the deployment of timely advanced telecom capabilities and interconnection as integrated parts of the core Congressional intent in passing the Act - the preservation and advancement of universal service to all Americans.

We are deeply troubled that the Joint Board decision seems to treat each of the regulatory proceedings mandated in Sections 251, 254 and 706 of the Act as if they are isolated events, separate and apart from and unrelated to each other. In fact, the Act's provisions respecting universal service mechanisms for advanced telecommunications services, advanced telecommunications capabilities and interconnection are really "one ball of wax" which must be considered together as part of a seamless whole to bring the nation's telecommunications policy into line with the new advancements in telecommunications and information services technology.

A. The FCC's Universal Service Responsibilities

Section 254(b) sets out the principles on which the FCC and Joint Board shall base policies "for the preservation and advancement of universal service". 47 U.S.C. § 254. The thrust of each of these principles is access to "advanced telecommunications and information services" which is

specifically referred to in Principle Numbers 2, 3, 5 and 6 taking into account advances in telecommunications and inferred in the other enumerated principles. Id. Indeed Section 254(b)(2) is explicit on this score: access to advanced telecommunication and information services should be provided in all regions of the nation. Id.

Section 254(c) makes it clear that Congress regarded universal service as a concept of an "evolving level of telecommunications services" taking into account "advances in telecommunications and information technologies and services." Id. There will undoubtedly be various facets and stages of advanced telecom services. But the Recommended Decision is mistaken in its view that nothing can now be usefully accomplished by focusing on the definition of universal services.¹ It is important--indeed imperative--that the Commission focus on the end game- the bedrock definition of advanced telecom services (without regard to what "bells and whistles" may also be involved). That definition is set out in Section 706 (c) as switched, broadband, two way telecommunications to all Americans. 47 U.S.C. § 706. The principles in Section 254(b), especially (b)(2) are set forth to direct the Commission and the states to act now in order that in a timely fashion, the nation can move ahead into the advanced broadband capabilities delineated in Section 706. Stated differently, the evolving concept of universal service is one from narrow band to broadband services.²

¹ We consider in B, infra, whether any facet of advanced telecom services comes today with the universal service concept.

² Section 254(h) continues the Act's focus and concern with the need to make available to all Americans advanced telecom and information services in the specific areas of education, libraries and health care.

Thus Section 706 concerns itself with the obvious fact that unless our nation's telecommunications networks are capable of carrying advanced services, universal service cannot become a reality "for all Americans." Section 706 mandates the Commission "to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans" which, as noted, it defines as "high speed switched broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics and video communications using any technology." Id. The use of the phrase "for the purposes of this subsection" is in no way limiting. The section states specifically that it applies to all "regulating methods" of the Commission which includes proceedings such as this one on universal service and the interconnection rulemaking.

The Congress clearly understood the need for advanced telecom capabilities in order to ensure that all American had access to advanced telecommunications services. These two concerns of Congress embraced in Sections 254 and 706 cannot be read in isolation from each other since they are two sides of the same coin. The existing local telephone system currently subject to universal service is ubiquitous but narrow band because its last distributional segment to the home (the local loop from the central office switch to the home) is currently based on the non compressed twisted pair (copper wire). The computer and related information industries are growing at an extraordinary speed with the number of transistors on a chip doubling every eighteen months.

Congress clearly recognized this disconnection between the narrow band last mile and the evolving telecommunications high speed and video services with its references to the evolving level of services. This evolution is proceeding at a rapid rate. The long distance networks, based on fiber optic cable or satellite capacity, can handle these high volumes. But when these transmissions come to localities and involve residences and small businesses, the information superhighway becomes a "dirt road." It will be impossible to ensure to all Americans access to advanced telecommunications and information services if the nation is left with the problem of the "dirt road" when the information superhighway hits the local area.

B. The Commission has failed to act now to promote the advanced broadband telecom capabilities, as directed by Sections 254 and 706.

The Recommended Decision does not now define any aspect of advanced telecom services as coming within the universal service requirement. That determination can be disputed. While no advanced telecom service today meets all four of the criteria set out in Section 254(c)(1) (and especially the criterion of the service having been taken, pursuant to market response, by a substantial majority of subscribers), the decision does note that not all four of the criteria must be met to qualify some services for inclusion under the universal service requirement. Certainly, some advanced services like data services for education (Internet access) or health care in residences which can be delivered through existing or slightly upgraded copper wire networks, would

markedly serve the public interest (See Section III infra). Indeed without these services, the education and health care goals of the nation cannot be said to have been adequately met.

But assuming, as we apparently must, that the Commission is not ready to take action along the above lines, it is still duty bound to act now, through all of its policy decisions, to promote the timely achievement of the bedrock advanced telecom service, switched broadband. The Joint Board recommends that the Commission do just the opposite; The Board has acted as if the mandate of Section 706 and 254(b)(2) need not be implemented in this proceeding, and indeed need not be considered at all; rather the Board seems to think that the FCC can get around to considering what to do about advanced broadband telecom capabilities 26 months from now by then initiating the Section 706 proceeding mandated by the Act.

This is a folly and the FCC must not accept the Board's recommendations on this score. Each year that is wasted in propelling the nation towards the deployment of advanced telecom networks is time lost forever. The requirements of Sections 706 and 254(b)(2) are applicable now to all FCC (and state) "regulating methods," and must, therefore, be taken into account in this and all other proceedings.

In this proceeding, for example, we set out in Section II our recommendations about community based applications allied to the universal service efforts directed to public institutions (eg. schools, libraries and health care centers). We strongly believe that such efforts can make a needed initial

contribution to building public awareness, acceptance and use of advanced telecom and information services, and thus to their widespread public employment.

There are undoubtedly stratagems that the Commission, state boards and the public can advance to meet the bedrock objectives of Sections 706 and 254(b)(2), if there is the needed focus on this vital subject. And, of course, the two sections must be taken into account when the Commission and the states deal with matters like price cap or depreciation regulation.

C. Incredibly, in the Interconnection decision, the FCC not only didn't take into account Sections 706 and 254(b)(2), but acted so as to markedly discourage investment in advanced telecom capabilities. That action must be corrected now in this proceeding or any other forum promptly initiated.

Our concern that the FCC is not interpreting the Telecom Act as a seamless whole is heightened by the way in which it treated the requirements of Section 251 interconnection regulations consistent with the mandate of Sections 706 and (254(b)(2).

The Commission did raise the issue of the application of Section 706 in the Interconnection proceeding (See Part XIII, First Report). We urged that "Section 706 should underlie all of the Commission's proceedings," thus including interconnection. Par 1268. Thus, the Commission, in that most important docket, continued its pattern of treating Sections 706 and 254(b)(2) as

seemingly stand alone provisions with no need to take their mandate into account in forging the interconnection rules.

The result was predictable and seriously flawed. In reaching its interconnection decision, the Commission appeared to be solely concerned with achieving a quick entry by the new competitors in local telecommunications. The Commission wholly ignored its equally important responsibilities under Sections 254 and 706 of the Act to promote both universal access to advanced telecommunications services and the timely deployment of networks capable of delivering advanced telecommunications services. Indeed, by mandating the TELRIC formula in establishing interconnection rates for unbundled elements (or "shadow network" of such elements), the FCC has imposed rather than removed a serious barrier in the way of advanced network deployment. Why should an ILEC make the large risky investment in switched broadband facilities if they must make the facilities available to competitors on the unbundled TELRIC basis? Why invest in some advanced telecommunications endeavor if the investment, if it turns out to be inefficient or a failure, will be eliminated from the prices charged competitors for the advanced network-- if R&D costs cannot be recovered?

The FCC should have integrated its interconnection regulatory action with the universal service and advanced telecommunications capabilities goals of the Telecom Act. It could have simply excluded the advanced network elements when built and implemented from the unbundling TELRIC regime. It could have followed the course advocated by Professor Alfred Kahn calling for

the advanced communications networks, whether telecom or cable, to go forward on an unregulated basis with the shareholder taking all the risks and getting all the benefits (and with rate payers protected as to basic service in view of price caps). There are other courses.³ The choice was the FCC's. What is not permissible under the Act was the Commission's refusal to give life to Sections 254 and 706 in all of its regulatory actions, including the important interconnection decision. That error must be promptly remedied by action either in this proceeding since it impacts the achievement of the Act's universal service goals (by making clear that such proposed remedial action is the a part of the proceeding), or by a notice speedily issued in a 706 proceeding or by a further notice in Docket No.96-95). The form is not important but some form of quick substantive action is most vitally needed.

To summarize the points:

- the Telecom Act does define the bedrock advanced telecom goal-- switched, two way, broadband capabilities;
- The Act does require the Commission (and states) to promote that goal today in all regulatory proceedings or methods so that it can be timely achieved;

³ See APT's suggestions in its earlier universal service filings, Dkt 96-95.

- The Commission will be acting inconsistently with that requirement if it continues to regard Section 706 as some stand-alone matter to which it can eventually turn;
- Moreover, in the Interconnection decision, the Commission placed a very large barrier to ILEC investment in advanced telecom capabilities. That serious error must be promptly remedied.

II. The Joint Board's Recommendation

The Joint Board's Limited Perception of How Universal Service is to Evolve in a Competitive Environment Requires the FCC to Adopt an Explicit Federal/State strategy for Integrating the Universal Service Commitments of Sections 706 and 254

A. The Joint Board's Recommendations Create Barriers to the Evolution of Basic to Advanced Telecom Services

The Joint Board stated it was eliminating the public policy commitment in Section 706 to "reasonable and timely" deployment of "advanced telecommunications capability to all Americans" from its consideration of universal service in the context of the Section 254 rule making proceeding." Federal-State Joint Board, Universal Service, CC Docket 96-

45, FCC (December 16, 1996) at paras. 614 & 619. APT believes this is in direct conflict with the Act's overarching commitment to an evolving concept of universal service in a competitive environment.

This approach by the Joint Board indicates a failure to comprehend how market-compatible entitlements to basic telephone services and targeted discounts for high-priority, community-based deployment of telecommunications technologies are linked inextricably to building out networks for advanced universal service.

The overall thrust of the Joint Board recommendations on universal service is to opt for developing a new (market compatible) system of universal service entitlements for basic telephone service which will be funded by explicit rather than implicit universal service support subsidies.

APT fully agrees that there must be a solid foundation of basic services for the evolution of advanced universal service as competitive forces are turned loose to develop and deploy advanced telecommunications technologies. Further it is well understood and accepted that explicit and equitable funding of subsidies is a precondition to workable competition--a guiding principle in the law and the recommendations of the Joint Board. However, the Joint Board appears to ignore the more subtle ways in which the process of making subsidies explicit also converts the public utility concept of "universal service"

into an internally funded, "virtual" entitlement program which may become highly vulnerable to political pressure in the future as an unacceptable safety net program for a narrow segment of the population. It is in this context that the severing of Section 706's advanced universal service commitments to all Americans from the Section 254 special discount proceeding has major consequences. These consequences must be understood and confronted by the FCC for remedial action in its consideration of the Joint Board's recommendations.

What the Joint Board fails to do is to establish a clear migratory path for network evolution under Section 706 which would prevent the new universal service support mechanisms for basic services from becoming another politically charged social welfare safety net that would be difficult to upgrade under the explicit funding requirements of the marketplace. Also, it assures only minimal voice grade linkages to advanced technologies for vast segments of the population at risk of being by passed or marginalized in a competitive environment.

The Joint Board appears confident in its recommendations that these undesired outcomes will be prevented. The Board's faith rests on its aggressive program of discounts to schools and libraries embracing advanced technologies and services, and in its considerably less aggressive development of discounts mandated by Congress for health care. (See our Health Care comments below in Section III). It sees these discounts as a